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March 30, 2006

Joseph T. Kelliher
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Mr. Kelliher:

Yesterday, I received your response to my March 27 letter regarding the settlement with the Southern Company negotiated by your chief of staff, Daniel Larcamp. I appreciate both the promptness of your response and the detail you provided. I remain concerned, however, that the central questions raised in my letter have not been answered. I also do not understand why the version of your response that was distributed to the press differed from the version I received.

In particular, your letter does not address the content of a December 5, 2005, Commission email. This email was not written by Rich Heidorn, the Commission employee who first raised concerns about the favorable treatment the Southern Company received. Instead, it was written by David Tobenkin, one of the staff attorneys working on the case.

The contents of this email appear to confirm Mr. Heidorn's account, and they are not discussed in your response. According to the email, Mr. Larcamp stated that "support for this proceeding at the chairman level has vanished with Joe taking over from Pat."¹ The email states that Mr. Larcamp told the staff that "the case would be a tough one politically and that he strongly prefers settlement."² It also reports that Mr. Larcamp said that "Southern would likely apply political pressure."³ According to the email, Mr. Larcamp explained, "even if the case goes forward, the Chairman would not be eager to expedite it and it would likely languish through 2007."⁴

¹ Federal Energy Regulatory Commission email (Dec. 5, 2005).

² *Id.*

³ *Id.*

⁴ *Id.*

Joseph T. Kelliher
March 30, 2006
Page 2


I would like to know your thoughts on the content of this email and whether you agree with me that the contents raise serious questions.

I also continue to have questions about your communications with Mr. Larcamp. Your letter states: "Since Mr. Larcamp was designated as nondecisional staff in this proceeding, we have had no discussions regarding any settlement negotiations." It does not, however, address whether you had communications with Mr. Larcamp about the proceeding before he was designated non-decisional and, if so, what those communications were.

Finally, your letter does not provide the communications between Mr. Larcamp and the Southern Company on the grounds that Commission "regulations bar the disclosure of confidential settlement discussions." As a general matter, I can understand the need to keep settlement discussions confidential. However, when serious allegations of improper conduct are made, Congress should have access to the communications so that it can perform the necessary oversight. Moreover, these regulations are not relevant to my request for communications between Mr. Larcamp and representatives of Southern that occurred before settlement negotiations began.

I look forward to another prompt response to these outstanding questions.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive, slightly stylized font.

Henry A. Waxman
Ranking Minority Member